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*Pro Se*

FILED

10 JUL 22 PM 2:35

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TODD C. ATKINS,  
Plaintiff,  
vs.  
MAGIC SLIDERS L.P.,  
Defendants.

Case No. **10 CV 1533** IE6 WVG  
COMPLAINT

Plaintiff TODD ATKINS ("Plaintiff"), for his Complaint against Defendant  
MAGIC SLIDERS L.P. ("Defendant"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for false patent marking under Title 35, § 292, of the United States Code.
2. As set forth in detail below, Defendant has violated 35 U.S.C. § 292 by marking and advertising certain products as being "patented" when in fact no valid patents cover the marked products.
3. Plaintiff seeks the imposition of a fine against Defendant, one-half of which shall be paid to the United States, and the other half of which shall be paid to Plaintiff pursuant to 35 U.S.C. § 292(b).

CR

THE PARTIES

4. Plaintiff is an individual residing in San Diego, CA with a correspondence address of 101 W. Broadway, Suite 1050, San Diego, California, 92101.

5. Upon information and belief, Defendant is a limited partnership organized and existing under the laws of Delaware, having its principal place of business at 50 Main Street, White Plains, NY 10606-1974.

JURISDICTION, VENUE, AND STANDING

6. This Court has subject matter jurisdiction over Plaintiff's present action under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant conducts substantial business in the State of California, including in this Judicial District.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1395(a) and 1400 because, at least in part, Defendant's products, the subject matter of this cause of action, are offered for sale and sold in various retail stores in this District.

9. Plaintiff brings this action under 35 U.S.C. § 292(b) which provides that any person may sue for civil monetary penalties for false patent marking.

DEFENDANT'S FALSELY MARKED PRODUCTS

10. Upon information and belief, Defendant distributes or sells MAGIC SLIDER® brand furniture slider products to multiple retail stores, including Home Depot, Target, Walmart, Ace Hardware, and True Value Hardware and many other retailers. At least some of such activities occur in this Judicial District.

11. Upon information and belief, Defendant promotes its MAGIC SLIDER® brand furniture slider products through television advertising. At least some of such activities target customers in this Judicial District.

12. Upon information and belief, the MAGIC SLIDER® brand furniture slider products distributed and/or sold in retail stores (in this Judicial District and nationally) by Defendant include products identified as (i) "RECTANGLE SLIDERS", (ii) "ROUND

1 SLIDERS", (iii) "SQUARE SLIDERS", and (iv) "TRIANGLE SLIDERS". Defendant distributes  
2 these products in various sizes and quantities.

3 13. Upon information and belief, Defendant's RECTANGLE SLIDERS,  
4 ROUND SLIDERS, SQUARE SLIDERS, and TRIANGLE SLIDERS products include labeling  
5 on their packaging that states inter alia, "Patented" and/or "Magic Sliders are patented."

6  
7 CAUSE OF ACTION FOR FALSE PATENT MARKING  
8

9 14. U.S. Patent No. 5,094,416 ("the '416 patent"), entitled "SLIDING  
10 SUPPORT TO FACILITATE THE DISPLACEMENTS OF LOADS AND IN PARTICULAR  
11 ITEMS OF FURNITURE" was issued by the USPTO on July 25, 1990. Every claim in the '416  
12 patent requires a "cup-shaped member" and a "plug-shaped member" that are "provided with  
13 annular ribs and grooves" with "said ribs and grooves of said plug-shaped member being  
14 respectively housed in corresponding grooves (sic) and ribs of said elastomeric body." Because the  
15 MAGIC SLIDER® brand furniture slider products identified above do not include corresponding  
16 grooves and ribs, they cannot even arguably fall within the scope of any claim of the '416 patent.

17 15. U.S. Patent No. 5,573,212 ("the '212 patent"), entitled "GLIDE BLOCK  
18 FOR MOVING LOADS" was issued by the USPTO on Nov. 12, 1996 and expired for  
19 nonpayment of fees on Dec 8, 2008. Before its expiration, every claim in the '212 patent required  
20 "a stud of synthetic material" and "means for attaching said stud to the bottom of a piece of  
21 furniture." Because none of the MAGIC SLIDER® brand furniture slider products identified  
22 above includes a stud of synthetic material nor means for securing a stud to furniture, they cannot  
23 even arguably fall within the scope of any claim of the '212 patent before its expiration. After  
24 Dec. 8, 2008, when the '212 patent expired, it no longer could protect or cover anything.

25 16. U.S. Patent No. 6,405,982 ("the '982 patent"), entitled "SELF-  
26 ATTACHING SLIDING SUPPORT FOR ARTICLES OF FURNITURE" issued on June 18,  
27 2002. Every claim in the '982 patent requires an "elastomeric element" having a "base portion"  
28 and a "circumferential inwardly extending rim" having an "edge which extends horizontally

1 inward and overhangs an interior space formed by the rim.” Because the MAGIC SLIDER®  
2 brand furniture slider products identified above do not include circumferential inwardly extending  
3 rims having edges which extend horizontally inward and overhang interior spaces formed by the  
4 rims, they cannot even arguably fall within the scope of any claim of the ‘416 patent.

5           17. Upon information and belief, Defendant is a sophisticated company which  
6 has experience with applying for, obtaining, and litigating multiple patents, and knows (itself or by  
7 its representatives), or reasonably should know, of the requirements of 35 U.S.C. § 292.

8           18. Upon information and belief, Defendant marks its MAGIC SLIDER® brand  
9 furniture slider products as “patented” for the purpose of deceiving the public into believing that  
10 something contained or embodied in its MAGIC SLIDER® brand furniture slider products is  
11 covered by at least one of the listed patents.

12           19. Upon information and belief, Defendant knows, or reasonably should know,  
13 that marking the above-described MAGIC SLIDER® brand furniture slider products with false  
14 patent statements was and is illegal under Title 35 of the United States Code. At a minimum,  
15 Defendant had and has no reasonable basis to believe that its use of the false markings was or is  
16 proper or otherwise permitted under federal law.

17           20. Each time Defendant makes, has made, uses, offers to sell, or sells within  
18 the United States, or imports into the United States, MAGIC SLIDER® brand furniture slider  
19 products containing false patent marking, such as described above, Defendant commits at least one  
20 “offense,” as defined in 35 U.S.C. § 292(a).

21           21. Since at least 2003, Defendant has promoted its MAGIC SLIDER® brand  
22 furniture slider products through an internet web site identified by the URL  
23 [www.magicsliders.com](http://www.magicsliders.com).

24           22. Defendant’s web site contains false patent information, including the  
25 statements “Magic Sliders are patented coated sliding discs that move any heavy item...” and  
26 “Magic Sliders are patented and trademarked.” (See <http://www.magicsliders.com/about/> and  
27 <http://www.magicsliders.com/instructions/>)  
28

24. For at least the reasons detailed above, Defendant knows, or reasonably  
should know, that the patent-related statements on its web site are false and violate 35 U.S.C. §  
292.

8                   25.     Upon information and belief, Defendant publishes false patent information  
9     on its web site for the purpose of deceiving the public into believing that unpatented MAGIC  
10  SLIDER® brand furniture slider products contain or embody “patented” technology.

11           26. Each time Defendant transmits, over the internet, MAGIC SLIDER®  
12 promotional content containing false patent information or assertions, Defendant commits at least  
13 one “offense”, as defined in 35 U.S.C. § 292.

14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff respectfully requests this Court, pursuant to 35 U.S.C.  
16 §292, to:

17 (1) Find that the Defendant's manufacture, promotion, advertising, marketing,  
18 sale, and/or distribution of products with false patent markings or false patent assertions violate 35  
19 U.S.C. § 292(a);

20 (2) Determine an appropriate “fine,” not more than \$500 per offense, but  
21 sufficient to appropriately penalize Defendant’s violations of § 292(a), and to deter Defendant and  
22 others similarly situated from violating § 292(a) in the future;

23                   (3)     Direct that half of the fine be paid to the United States government pursuant  
24     to § 292(b); and

25           (4)     Direct that the other half of the fine be paid to Plaintiff pursuant to § 292(b).

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: June 24 2010



Todd Akins

*Pro se*

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Todd C. Atkins

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Magic Sliders L.P.

County of Residence of First Listed Defendant Delaware 2:35  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. MTB

Attorneys (If Known)

**10 CV 1533** IE6 VVG

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

- |  |  |  |  |  |  |
|--|--|--|--|--|--|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs.<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other   | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input checked="" type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark  | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property   | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights   | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition   | <input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAXES</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS--Third Party 26 USC 7609 |  |

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC section 292 28.1328

Brief description of cause:  
False Patent Marking

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/24/2010

Todd C. Atkins

FOR OFFICE USE ONLY

RECEIPT # 16132

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

CR

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS016132  
Cashier ID: bhartman  
Transaction Date: 07/22/2010  
Payer Name: ATKINS AND DAVIDSON

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CIVIL FILING FEE  
For: ATKINS V MAGIC SLIDERS  
Case/Party: D-CAS-3-10-CV-001533-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 4252  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.